

EXHIBIT "A"

FILED

MAR 14 2016

Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

JAROSLAW NICZYPORUK aka JAREK
NICZYPORUK and AGNES NICZYPORUK,

Plaintiffs,

v.

SERVIS ONE, INC. dba BSI FINANCIAL
SERVICES; LAW OFFICES OF LES ZIEVE;
BENJAMIN PETIPRIN; BANK OF AMERICA,
N.A. fka BAC HOME LOAN SERVICING, LP;
VENTURES TRUST 2013-I-H-R by MCM
CAPITAL PARTNERS, LLC; and Doe
Defendants 1 through 20, inclusive,

Defendants.

Case No.

16200996-9

COMPLAINT FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION;
VIOLATIONS OF THE CONSUMER
PROTECTION ACT

COMES NOW, Plaintiffs JAROSLAW NICZYPORUK aka JAREK NICZYPORUK
and AGNES NICZYPORUK, to complain as follows:

I. PARTIES

1.1 Plaintiffs JAROSLAW NICZYPORUK aka JAREK NICZYPORUK and
AGNES NICZYPORUK, are residents of Spokane County, Washington, and they plead the
following allegations, states that those allegations are true of their own knowledge, except as to
matters stated on information and belief, and as to those matters, they believe them to be true.

COMPLAINT FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION; VIOLATIONS OF THE
CONSUMER PROTECTION ACT - 1

LAW OFFICES OF
MELISSA A. HUELSMAN, P.S.
705 SECOND AVENUE, SUITE 601
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 447-0103
FACSIMILE: (206) 673-8220

1 1.2 Plaintiffs are the owners of real property located at 1315 North Dunbarton Oaks
2 Lane, Liberty Lake, WA 99019 (hereinafter referred to as the "Residence"). Plaintiffs'
3 Residence is scheduled to be nonjudicially foreclosed on April 1, 2016.

4 1.3 Defendant SERVIS ONE, INC. dba BSI FINANCIAL ("BSI") is a Delaware
5 corporation, which is not registered as a foreign corporation with the State of Washington.
6 Defendant BSI is registered with the Washington Department of Licensing using an address in
7 Irving, Texas. It is also registered as a Consumer Loan Company with the Washington State
8 Department of Financial Institutions. Defendant BSI conducts business in the State of
9 Washington by servicing mortgage loans that are secured by real property located in the State
10 of Washington, including the Plaintiffs' Residence. It appears that the business name BSI
11 Financial, Inc. is a dba of Servis One, Inc., also a Delaware corporation with an address in
12 Irving, Texas. Defendant BSI appears to presently be the loan servicer on the Plaintiffs' loan
13 and has made false representations in connection with that loan servicing and in connection
14 with the attempted nonjudicial foreclosure of the Plaintiffs' Residence.
15 with the attempted nonjudicial foreclosure of the Plaintiffs' Residence.

16 1.4 Defendant LAW OFFICES OF LES ZIEVE ("Zieve") is an unidentified form of
17 law firm which conducts business in the State of Washington. Documents recorded in the
18 records of Spokane County, Washington purport to appoint Defendant Zieve as the Trustee for
19 purposes of conducting the nonjudicial foreclosure sale of the Niczporuk's Residence.
20 Defendant Zieve prepared or caused to be prepared the Notice of Default that is being used to
21 initiate a nonjudicial foreclosure sale of the Niczporuk's Residence. This entity then prepared
22 or caused to be prepared, and caused to be recorded the Notice of Trustee's Sale that is the
23 subject of this lawsuit. The Niczporuk maintains that this was done in a manner that was in
24 contravention of the requirements of the DTA.
25 contravention of the requirements of the DTA.
26 contravention of the requirements of the DTA.
27 contravention of the requirements of the DTA.

1 Defendant Zieve purports to operate a business office in the State of Washington, but
 2 whether or not it is an actual office where those facing foreclosure may obtain information
 3 about a pending foreclosure and/or pay the arrears remains an open question.

4 1.5 Defendant BENJAMIN D. PETIPRIN ("Petiprin") is an attorney at law who is
 5 admitted to practice in the State of Washington, but who is physically located in Southern
 6 California. Defendant Petiprin also holds himself out as the foreclosing trustee so either he or
 7 his employer, Defendant Zieve, are purporting to act as the foreclosing trustee. Defendant
 8 Petiprin has held himself out to be an employee of Defendant Zieve and provided an address on
 9 the foreclosure documents of 1100 Dexter Avenue North, Suite 100, Seattle, WA 98109 as the
 10 appropriate return address. Again, this is in spite of the fact that Mr. Petiprin works in
 11 California. In addition, information on the Washington State Bar Association for Mr. Petiprin
 12 indicates that he is now employed by the law firm of Zieve, Brodnax & Steele, LLP with an
 13 address at 6100 219th Street SW, Suite 480, Mountlake Terrace, WA 98043. None of this
 14 information is included on any of the foreclosure documents nor have the Plaintiffs been
 15 provided with updated information about this supposed change in address.
 16

17 Moreover, based upon information and belief, the Plaintiffs maintain that neither
 18 Defendant Zieve nor Petiprin even perform any of the work associated with being the alleged
 19 "trustee". Rather, all work is performed by a third party company and that Defendants Zieve
 20 and Petiprin act as "sham" trustees in order to permit a company that cannot operate as a
 21 foreclosing trustee in the State of Washington, in conformity with the requirements of the Deed
 22 of Trust Act, to act as a foreclosing trustee.
 23

24 1.6 Defendant BANK OF AMERICA, N.A. fka BAC HOME LOAN SERVICING,
 25 INC. ("BANA") is a national bank which is not required to register with the State of
 26

1 Washington. Defendant BANA conducts business in the State of Washington by servicing
 2 mortgage loans that are secured by real property located in the State of Washington, including
 3 the Plaintiffs' Residence, as well as engaging in other banking activities in Washington state.
 4 Defendant BANA was previously the loan servicer on the Plaintiffs' loan and has made false
 5 representations in connection with that loan servicing and in connection with a previous
 6 attempted nonjudicial foreclosure of the Plaintiffs' Residence. Defendant BANA also
 7 committed a *per se* violation of the Consumer Protection Act when it did not participate in a
 8 foreclosure mediation, as required under the DTA (RCW 61.24.163), when the Plaintiffs' were
 9 trying to modify their loan.
 10

11 1.7 Defendant VENTURES TRUST 2013-I-H-R by MCM CAPITAL PARTNERS,
 12 LLC ("Ventures Trust") appears to be some sort of trust which is involved in the purchase of
 13 mortgage loans that were in default at the time of purchase. Representations have been made on
 14 foreclosure documentation indicating that Defendant Ventures Trust is located in Maryland, in
 15 spite of the fact that MCM Capital Partners, LLC, the purported entity directing the actions of
 16 Defendant Ventures Trust, is located in Ohio. Some of the nonjudicial foreclosure documents
 17 prepared by the other defendants indicate that Defendant Ventures Trust is now the owner of
 18 the Plaintiffs' loan and the noteholder. RCW 61.24.005(2). However, this is also contradicted
 19 by assertions that Defendant BSI is the noteholder.
 20

21 1.8 The true names and capacities of Does 1 through 20, inclusive, whether
 22 individual, corporate, partnership, associate or otherwise, are presently unknown to Plaintiffs,
 23 who therefore sues said Defendants by such fictitious names. Plaintiffs allege, based upon
 24 information and belief, that each Defendant is responsible in some manner for the events
 25 described herein and is liable to Plaintiffs for the damages they have incurred. Plaintiffs will
 26
 27

1 amend this Complaint to show the true names and capacities of the Doe Defendants when the
2 same have been ascertained.

3 II. FACTUAL ALLEGATIONS

4 2.1 The Niczyporuks have owned their Residence since 2007 when they purchased
5 it by making a down payment and obtaining a mortgage loan. They then obtained a refinance of
6 the original mortgage loan from Countrywide Bank, FSB ("Countrywide") in February 2008.
7 They live there with their children and made payments on their mortgage loans for a few years.
8

9 2.2 In connection with obtaining the mortgage loan from Countrywide, the
10 Niczyporuks signed a Promissory Note which was payable to Countrywide as the "Lender". It
11 was an interest only loan for ten years with the interest rate adjusting annually. They also
12 signed a Deed of Trust, which secured the debt, which also identified Countrywide as the
13 "Lender". MERS is listed as the "beneficiary" in the Deed of Trust, even though it is never and
14 was never intended to be the "noteholder" and was always intended to be a company that keeps
15 track of loan ownership in its computer system. MERS never had any beneficial interest in the
16 Plaintiffs' mortgage loan.
17

18 2.3 In 2009, the Plaintiffs fell behind on their mortgage payments and began seeking
19 a loan modification from Defendant BANA, because it had assumed the servicing of the loan.
20 Initially they were denied a loan modification, but they kept applying and in April 2010, they
21 were approved for a trial period payment plan. They began making the required monthly
22 payments except for the payment due in July 2010 because they were told by employees of
23 Defendant BANA not to do so. (They believe it was because it was the end of the three month
24 trial period initially contemplated by the TPP.) However, they were then told to resume making
25
26
27

1 the payments and did so for the subsequent months. In spite of these trial period payments, they
2 were again denied a permanent modification in November 2010.

3 2.4 During this time period, the Plaintiffs were also sued by their homeowners'
4 association and thought they might lose the house as a result of all of the activities around it.
5 However, they eventually won the lawsuit brought by the HOA, following an appeal.
6

7 2.5 The Niczyporuks were served with nonjudicial foreclosure documents in 2011
8 by another foreclosing trustee company and their Residence was scheduled to be sold in July
9 2011. However, the Plaintiffs filed a Chapter 7 bankruptcy, which got rid of their debt that was
10 weighing them down financially and it stopped the nonjudicial foreclosure sale. They
11 eventually received a discharge.
12

13 2.6 The Niczyporuks then became aware that they could participate in a foreclosure
14 mediation program available under state law and sought assistance from a housing counselor to
15 participate in this process. RCW 61.24.163. They began the process of completing paperwork
16 that was submitted to request a loan modification in compliance with the requirements of the
17 statute. *Id.* The first mediation session was on March 11, 2013. The Plaintiffs were present
18 along with their housing counselor representative. Defendant BANA participated through a
19 Washington lawyer who was a "contract" attorney acting on behalf of an out of state law firm
20 in Las Vegas, Nevada. The BANA representative participated by telephone.
21

22 2.7 During the first session, Defendant BANA requested additional documentation
23 from the Plaintiffs and they agreed to provide it. They did provide it through their
24 representative and it was provided to Defendant BANA. They participated in a second session
25 on May 22, 2013 and again, Defendant BANA asked for more documents. The Plaintiffs
26 agreed to provide these additional documents and the parties agreed to schedule a third session
27

1 so that there could be a discussion of the review results. However, before a third session could
 2 be scheduled, Defendant BANA terminated the representation of the Las Vegas law firm but
 3 did not appoint a new representative. The mediator apparently tried for some period of time to
 4 make contact with a new representative on behalf of Defendant BANA, to no avail. The Las
 5 Vegas law firm did nothing to facilitate substitution and presumably because the only contact
 6 information for BANA that it provided to the mediator was the law firm, the mediator had no
 7 other ability to reach anyone at Defendant BANA.
 8

9 2.8 As a result of its refusal to participate in the FFA mediation process, and its
 10 refusal to provide NPV (net present value) inputs to the mediator, the mediator made a finding
 11 that Defendant BANA had not participated in good faith in the mediation. While the mediator
 12 was trying to find someone at Defendant BANA to participate in the mediation, it issued a
 13 denial of modification to the Plaintiffs in January 2014. The mediator signed the certificate on
 14 April 7, 2014.
 15

16 2.9 Documents that had been previously provided to the Plaintiffs in connection
 17 with attempts to foreclose nonjudicially had asserted, alternatively, that Defendant BANA was
 18 merely the loan servicer, that it was the "beneficiary under the deed of trust", that it was the
 19 "noteholder" either by holding the note or by acting through an agent, and that it was also the
 20 loan owner. The Plaintiffs do not personally know who was the loan owner, who was the
 21 noteholder and/or what exact role Defendant BANA had to its loan, but its own documentation
 22 has raised serious questions about its role throughout the numerous attempts at foreclosure and
 23 collection on the debt. Moreover, Defendant BANA did not participate in the FFA mediation in
 24 good faith, whether it was acting exclusively for itself or whether it was acting for another.
 25
 26
 27

1 2.10 Once the mediation was closed out, the Niczyporuks did not know what to do to
 2 continue to try to get their loan back on track, to no avail. They could not get any further
 3 response from Defendant BANA so they were just stuck waiting. Then they received a notice
 4 that the servicing of the loan had changed to Defendant BSI. When a new nonjudicial
 5 foreclosure was started in early January 2015, in the name of Defendant BSI, the Plaintiffs
 6 received a Notice of Pre-Foreclosure Options ("NOPFO"), a document that is required under
 7 Washington law, indicating that they could request an in person meeting to try to avoid
 8 foreclosure. They responded to receiving the NOPFO by sending a written request to Defendant
 9 BSI asking for an in-person meeting to discuss their financial situation and to try to avoid
 10 foreclosure. They received no response at all from Defendant BSI. The Plaintiffs sent the
 11 request by Certified Mail and have a copy of the receipt showing that an employee of
 12 Defendant BSI, Charlene Armstrong, signed for it on January 29, 2015. This is an express
 13 violation of the requirements of the Deed of Trust Act. RCW 61.24.030.

16 2.11 When no one from Defendant BSI responded to the written request, the
 17 Plaintiffs did not know what else to do. They had also been calling to try to get a response, but
 18 to no avail. They received several letters in September and October 2015 giving them an ever-
 19 changing series of names of persons who were supposed their "single point of contact". The
 20 fact that this person was changing every month made the assertion that this was their "single
 21 point of contact" an obvious lie. In August 2015, the Plaintiff received from Defendant BSI a
 22 letter telling them that they have been "approved" for a short sale program. The Niczyporuks
 23 never applied for such a program. They wanted a loan modification, but it is clear that
 24 Defendant BSI wanted to make sure that they did not have a chance to save their home from
 25 foreclosure, but rather, was trying to force them out of their home.
 26
 27

1 2.12 In an effort to try to get some information about their loan and hoping that by
2 sending it they would get a more substantive response from Defendant BSI about possible loan
3 modification, they sent a Qualified Written Request to Defendant BSI on September 24, 2015.
4 It was signed for by Ariel Mantilla on October 8, 2015. A copy of the request was also mailed
5 to Defendants Petiprin and Zieve in October 2015. The Certified Mail Receipt for this copy was
6 signed for by Keer E. Beavers on October 13, 2015. It was acknowledged by Defendant BSI in
7 a letter dated October 19, 2015.
8

9 2.13 When Defendant BSI actually responded to the QWR in a letter dated October
10 28, 2015, it provided copies of relevant documents. These included a copy of the original Note,
11 without indorsements and the Deed of Trust. Defendant BSI did NOT tell the Plaintiffs the
12 identity of the current loan owner and did not provide a copy of the Note that was current. The
13 "payment history" provided was largely unintelligible, as there were no notations that would
14 allow them to have an understanding of what had been added to their loan balance. Rather, it
15 was some sort of two page summary rather than an actual loan history. The copy of the loan
16 servicing transfer letter confirmed that it was not timely sent. The letter from Defendant BSI
17 was dated **October 1, 2014** - the date that the servicing allegedly transferred from Defendant
18 BANA to BSI. This letter must be sent PRIOR to the servicing transfer, not mailed out (if it
19 was even mailed on that date) on the date that the servicing changes. The QWR Response did
20 not provide current information about the loan owner, but did provide a copy of another letter
21 from October 2014 which was allegedly sent to the Plaintiffs from Defendant BSI providing
22 them with information about the new loan owner – Defendant Ventures – and giving them their
23 loan balance. However, by the time of the QWR Response, this letter was a year old. In
24 addition, the information about the new loan owner, Defendant Ventures Trust, only provided
25
26
27

1 an address in Maryland for Defendant BSI. It did not provide an actual address for the creditor
 2 that was not "in care of" the servicer. The Plaintiffs' loan was allegedly sold to Defendant
 3 Ventures Trust on September 30, 2014.

4 2.14 Documents in the records of Spokane County, Washington apparently used in
 5 connection with the most recent attempt at nonjudicial foreclosure include an Assignment of
 6 Deed of Trust allegedly signed by an officer of MERS, acting for the benefit of Countrywide,
 7 dated January 28, 2011, purporting to transfer the beneficial interest in the Plaintiffs' Deed of
 8 Trust from MERS to Defendant BAC Home Loans Servicing. However, this person, Jeff
 9 Stenman, was nothing but an employee of a foreclosing trustee company, Northwest Trustee
 10 Services, Inc., that had previously tried to foreclose on the Plaintiffs' Residence. The document
 11 was recorded in the records of Spokane County, Washington on February 2, 2011. Another
 12 Assignment of Deed of Trust was signed by an employee of Defendant BANA who purported
 13 to transfer the beneficial interest in the Plaintiffs' Deed of Trust from one BANA entity to
 14 BANA itself. This was recorded in the records of Spokane County, Washington on September
 15 16, 2011.

18 2.15 On or about June 1, 2015, an employee of Defendant BSI signed another
 19 Assignment of Deed of Trust document as though it was an "attorney in fact" for Defendant
 20 BANA. Plaintiffs maintain, based upon information and belief, that Defendant BANA had not
 21 appointed Defendant BSI as its "attorney-in-fact" and had not instructed Defendant BSI to
 22 execute that document. It was recorded in the records of Spokane County, Washington on July
 23 7, 2015.

25 2.16 Included in the documents mailed to the Plaintiffs by Defendant BSI in October
 26 2015 were copies of letters from the end of 2014 and early 2015 relating to its unilateral
 27

1 decision not to pay homeowners' insurance through their escrow account, even though this was
 2 being done since loan inception. No explanation was given for this decision nor does it even
 3 make sense at all. In a second letter about the insurance escrow situation, there was an
 4 indication that the owner of the Plaintiffs' loan was going to either get an umbrella policy or
 5 "self-insure". The Plaintiffs have no idea how this odd position has changed the amounts that
 6 are being demanded of them by the various defendants in this case.

8 2.17 A letter from Defendant BSI to the Plaintiffs dated October 28, 2015 indicated
 9 various amounts allegedly owed on the loan, which included "attorneys' fees" in the amount of
 10 **\$2,369.53**. The Plaintiffs do not know of any court proceeding in which anyone was awarded
 11 attorneys' fees against them related to this loan.

12 2.18 On or about September 21, 2015, Defendant Petiprin, apparently acting on
 13 behalf of Defendant Zieve "as Trustee", signed a Notice of Default wherein he or it contended
 14 that the Plaintiffs would be required to pay, at the very least, the allegedly missing monthly
 15 payments from August 1, 2010 through September 15, 2015, late charges, escrow arrears, as
 16 well as fees related to the foreclosure process in the amount of **\$3,036.85**. The Niczyporuks are
 17 specifically contesting these amounts as being unreasonable and inflated, especially the
 18 "foreclosure fee" in the amount of **\$1,125.00**, given the minimal amount work involved in
 19 preparing the Notice of Default ("NOD"), which is the only document that had been created at
 20 that point. The service or posting of the NOD was also inflated as it was **\$85.00**, when the
 21 standard charge is **\$50.00**. It appears that the mailing charges were also massively inflated,
 22 perhaps in large part because there were multiple duplicative names and addresses done on the
 23 mailing, including incorrect spellings of Mr. Niczyporuk's first name. The total postage
 24 charges listed were **\$409.32**. All of these amounts are unreasonable and are hereby disputed.

1 2.19 The NOD asserts that the creditor to whom the debt is owed is Defendant
2 Ventures Trust. The NOD was issued by Defendants Petiprin and/or Zieve in the name of
3 Defendant Ventures Trust as well, as it is identified as the "beneficiary and noteholder". There
4 is no indication on this document that BSI is the "beneficiary" or the "noteholder" nor that it is
5 the creditor who is initiating the nonjudicial foreclosure.

6
7 2.20 Also attached to the NOD was a Foreclosure Loss Mitigation Form identifying
8 Defendant Ventures Trust as the "beneficiary" and Defendant BSI as the "servicer". It is signed
9 by Bethany Neel as Vice President of BSI, as its "attorney-in-fact" on April 21, 2015. Box "1"
10 is checked wherein Ms. Neel, on behalf of Defendants BSI and Ventures Trust, wherein they
11 falsely assert that they had contacted the Niczyporuks about foreclosure alternatives and that
12 the Niczyporuks had not requested an in person meeting. As identified above, just months
13 before the Plaintiffs had sent a request for an in-person meeting and had not received any
14 response to that request from Defendant BSI.

15
16 2.21 In connection with appointments of trustees to nonjudicially foreclose, on or
17 about February 1, 2011 an employee of NWTs, Vonnie McElligott, signed an Appointment of
18 Successor Trustee document allegedly under a Power of Attorney document provided by
19 Defendant BANA. This document purported to appoint NWTs as the successor trustee under
20 the Niczyporuks' Deed of Trust and was recorded in the records of Spokane County,
21 Washington on February 2, 2011.

22
23 2.22 On or about July 3, 2014 another employee of Defendant BANA signed another
24 Appointment of Successor Trustee document purporting to appoint another foreclosing trustee
25 company, MTC Financial, Inc. dba Trustee Corps, was recorded in the records of Spokane
26 County, Washington on July 10, 2014.

1 2.23 Another Appointment of Successor Trustee document was signed by Bethany
2 Neel of Defendant BSI (the same woman who falsely asserted that the Plaintiffs had not
3 requested an in-person meeting) as the alleged "attorney-in-fact" for Defendant Ventures Trust.
4 Ms. Neel signed the document on June 17, 2015 and it was recorded in the records of Spokane
5 County, Washington on July 7, 2015. This document purported to appoint Defendants Petiprin
6 and/or Zieve and the newest foreclosing trustee. The Plaintiffs maintain that this Appointment
7 is invalid because it was not signed by the "beneficiary" as required under the statute, RCW
8 61.24.010(2) and the Plaintiffs maintain, based upon information and belief, that Defendant
9 Petiprin and/or Zieve did not have a Beneficiary Declaration which was properly executed in
10 compliance with the requirements of the DTA. RCW 61.24.163(7).

12 2.24 Apparently acting in reliance upon this latest Appointment of Successor Trustee
13 document, Defendants Petiprin and/or Zieve caused a Notice of Trustee's Sale ("NOTS") to be
14 issued and recorded in the records of Spokane County, Washington. The NOTS indicated that
15 Defendant Ventures Trust was the "beneficiary and noteholder". It was signed by Defendant
16 Petiprin either on his behalf alone and/or on behalf of Defendant Zieve. When the Niczyporuks
17 received the NOTS document by mail, they also received a Notice of Foreclosure document.
18 Contradictory to the information contained in the NOTS document, the Notice of Foreclosure
19 asserted that it was Defendant BSI that was the "beneficiary" and "owner of the obligation" and
20 that it was Defendant BSI who was foreclosing on the Plaintiffs' Deed of Trust. Both
21 documents indicated that if the Plaintiffs did not cure all of their arrears and the amounts
22 demanded on the notices, their Residence would be sold at auction on **April 1, 2016**. In this
23 document, the trustee's fee is now listed as **\$1,010.00** (less than the amount listed on the NOD),
24 the charges for posting this second set of documents was the same inflated charge (\$85.00) as
25 the charges for posting this second set of documents was the same inflated charge (\$85.00) as
26 the charges for posting this second set of documents was the same inflated charge (\$85.00) as
27

1 the posting of the NOD, and then the mailing costs identified first as \$216.43 and then \$376.39,
 2 depending on which juncture of the foreclosure process was involved. There was also a
 3 demand for payment of \$34,771.12 for "advances". The Plaintiffs have no idea what this
 4 amount represents, but to extent that it includes inflated, unreasonable and unearned fees and
 5 costs, they are objectionable.

6
 7 2.25 The Plaintiffs are now facing a pending foreclosure sale on April 1, 2016. The
 8 foreclosure is being held by an entity who does not appear to have the legal right to do so under
 9 Washington law. The amounts demanded in connection with the attempts at nonjudicial
 10 foreclosure have been improperly inflated, as described more particularly above, and to the
 11 extent that these nonjudicial foreclosures have not been done in conformity with the
 12 requirements of the DTA, the Plaintiffs have suffered damages in connection therewith. The
 13 Plaintiffs have been required to pay an initial consultation fee to an attorney in order to
 14 understand their rights in the amount of \$400.00. They had to travel to Seattle to get this
 15 assistance and the costs of that travel are at least \$100.00. They have suffered sleepless nights
 16 and anxiety due to the constant concern about losing their house. They just wanted to get a loan
 17 modification and to try to keep their home. They have continued to get the runaround from the
 18 various loan servicers and when it was being serviced by Defendant BANA, it completely
 19 bailed out of the FFA mediation process, resulting in the "not in good faith" certification.

20
 21 2.26 The Niczyporuks know that they are not entitled under the law to a loan
 22 modification, but they are entitled to a good faith participation in the FFA mediation process
 23 and they are entitled to having those trying to foreclose on their Residence nonjudicially to
 24 comply with the DTA. They should be free from demands for monies which are unearned,
 25 unreasonable and inflated in connection therewith.
 26
 27

III. CAUSES OF ACTION

First Cause of Action For Temporary Restraining Order and Preliminary Injunction As Against Defendants BSL Zieve and Petiprin

3.1 Plaintiffs incorporate herein by reference as though fully set forth at length each and every allegation and statement contained in Paragraphs 1 through 2.26, inclusive, of the Factual Allegations.

3.2 By way of the filing of a separate motion, Plaintiffs will move for issuance of a temporary restraining order and a preliminary injunction in order to stop the currently scheduled foreclosure sale and to prevent re-initiation of any future foreclosure sale.

3.3 In order to obtain an injunction under the Deed of Trust Act, a plaintiff need only show that there is some reason that the sale should be enjoined. The criteria for obtaining a temporary restraining order and a preliminary injunction as stated under CR 60 do not necessarily apply in a foreclosure proceeding, because the Deed of Trust Act sets out more liberal criteria for obtaining a restraint of the sale. RCW 61.24, *et seq.*

3.4 In addition, under the DTA, a borrower must seek to obtain an order restraining the sale or risk the possibility of waiving some of his or her claims against the foreclosing entities and/or in relation to the making and servicing of the mortgage loan. Thus, it is important for a Court to use a liberal standard when deciding whether or not to restrain a foreclosure sale. Plaintiffs seek to restrain the purported Trustee, Defendants Petiprin and/or Zieve, from proceeding with the foreclosure sale process and will be asking the Court, by way of a separately filed motion(s), to prevent Defendants Petiprin/Zieve and/or any other newly appointed trustee and/or any other party from completing a foreclosure of any kind against the Plaintiffs' and their Residence.

Second Cause of Action
Violations of the Consumer Protection Act
as Against All of the Defendants

3.5 Plaintiffs incorporate herein by reference as though fully set forth at length each and every allegation and statement contained in Paragraphs 1 through 2.26, inclusive, of the Factual Allegations, and Paragraphs 3.1 through 3.4, inclusive, of Causes of Action above.

3.6 All of the Defendants engaged in a pattern of unfair or deceptive practices, as more expressly outlined above, in connection with its involvement in manufacturing documents that were utilized in connection with the pending nonjudicial foreclosure. The Niczyporuks contend that these Defendants have therefore acted in violation of the Washington Consumer Protection Act, RCW 19.86 *et seq.*, entitling Plaintiffs to damages, treble damages, injunctive relief and reasonable attorneys' fees and costs pursuant to the statute.

3.7 Defendants Petiprin and/or Zieve also violated the CPA by their actions in violation of the requirements of Deed of Trust Act, as more particularly described above. This will include, but is not limited to, working with the other Defendants to attempt to foreclose on Plaintiffs' Residence and real property of other Washington homeowners without the legal authority to do so and to perpetrate a scheme to routinely violate the requirements of the DTA by helping to have created an Appointment of Successor Trustee document that it knew to be signed by a person without the legal authority under Washington law to execute the document. In addition, the Niczyporuks maintain, based upon information and belief, that Defendants Petiprin and/or Zieve included false and misleading information on the documents used in connection with the attempted nonjudicial foreclosure and that they were not completed in conformity with the requirements of the DTA. Nevertheless, Defendants Petiprin and/or Zieve initiated a nonjudicial foreclosure proceeding using those documents in support of its position,

1 in an effort at boosting its own profits and potentially denying the Niczyporuks of the
 2 opportunity to save their Residence from foreclosure. These Defendants also greatly inflated
 3 the "foreclosure fees" that they demanded from the Plaintiffs and vastly inflated the mailing
 4 charges and the posting charges, in order to increase their own profit.

5 3.8 Plaintiffs also maintain, based upon information and belief, that Defendants
 6 Petiprin and/or Zieve are not actually conducting the attempted nonjudicial foreclosure and that
 7 all work in connection therewith is being performed by another company that is not authorized
 8 to conduct business or act as a foreclosing trustee in Washington state.

9 3.9 Plaintiffs maintain, based upon information and belief, that all of the Defendants
 10 have engaged in a pattern of unfair and deceptive acts in violation of the Washington CPA,
 11 RCW 19.86, *et seq.*, entitling Plaintiffs to damages, treble damages, injunctive relief and
 12 reasonable attorneys' fees and costs pursuant to the statute.

13 3.10 Plaintiffs allege that these Defendants actions and inactions have impaired and
 14 damaged them, entitling them to damages to be proven at the time of trial.

15 PRAYER FOR RELIEF

16 Wherefore, having set forth various causes of action against Defendants, Plaintiffs pray
 17 for the following relief:

- 18 1. That judgment be entered against all of the Defendants awarding Plaintiffs
 19 damages in an amount to be proven at the time of trial;
- 20 2. That the actions of all of the Defendants be determined to be unfair and deceptive
 21 business practices in violation of RCW 19.86, *et seq.* and that this Court award all such relief to
 22 Plaintiffs as they may be entitled to under the Consumer Protection Act, including treble
 23 damages and an award of costs and attorney's fees and including injunctive relief;

24 COMPLAINT FOR TEMPORARY RESTRAINING ORDER
 25 AND PRELIMINARY INJUNCTION; VIOLATIONS OF THE
 26 CONSUMER PROTECTION ACT - 17

LAW OFFICES OF
 MELISSA A. HUELSMAN, P.S.
 705 SECOND AVENUE, SUITE 601
 SEATTLE, WASHINGTON 98104
 TELEPHONE: (206) 447-0103
 FACSIMILE: (206) 673-8220

1 3. That the Plaintiffs be awarded consequential damages, including attorney's fees
2 incurred to obtain legal advice prior to filing this lawsuit and any other attorney's fees and costs
3 and mediation fees incurred in connection with the attempted mediation, caused by the
4 Defendants as more particularly described above, in an amount to be fully proven at the time of
5 trial;

6
7 4. That the Plaintiffs be awarded their fees and costs pursuant to the written
8 agreements upon which the Defendants are attempting to rely;

9 5. That the Plaintiffs be awarded statutory damages available under RCW 19.86, *et*
10 *seq.* and other applicable statutes;

11 6. That the Court award such other relief as it deems just and proper.

12 DATED this 10th day of March, 2016.

13 LAW OFFICES OF MELISSA A.
14 HUELSMAN, P.S.

15 
16 Melissa A. Huelsman

17 Melissa A. Huelsman, WSBA #30935
18 Attorney for Plaintiffs